

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
JAN 26 2005
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

IN RE)
CLAYTON PATRICK and MARY MULLER,) Case No. 601-69644-fra7
Debtors.)
CLAYTON C. PATRICK,) Adv. Proc. No. 04-6100-fra
Plaintiff,)
vs.)
MICHAEL K. TANDY and SUSAN QUAN,) MEMORANDUM OPINION
Defendants.)

I. BACKGROUND

Debtors Patrick and Muller filed bankruptcy under Chapter 7 on December 26, 2001, were granted a general discharge on December 21, 2002, and the case was closed on that date. Defendants Tandy and Quan filed an adversary proceeding in the Debtors' bankruptcy case in which they sought a judgment declaring their claim against the Debtors, consisting of loans made to Mr. Patrick over a number of years, to be

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1 nondischargeable.¹ A trial was held on July 30, 2003. At the
2 conclusion of Tandy and Quan's case in chief, the court granted
3 defendant Muller's motion to dismiss on the grounds that
4 plaintiffs had failed to make a *prima facie* case against her, and
5 the trial proceeded to completion against Mr. Patrick only.

6 In a memorandum opinion issued after trial, this Court held
7 that Mr. Patrick, an attorney licensed in Oregon, had established
8 an attorney/client relationship with the plaintiffs by February
9 14, 1997. From that date forward, he had an obligation to advise
10 Tandy and Quan prior to borrowing any more money from them or
11 Clearspring Trust that their interests were opposed, that certain
12 risks might exist, and that they should seek independent legal
13 advice. Failure to make such disclosures combined with other
14 evidence submitted at trial rendered that part of Tandy and
15 Quan's claim relating to loans made to Patrick on or after
16 February 14, 1997 nondischargeable under Code § 523(a)(2)(A).

17 A judgment was entered against Patrick on October 31, 2003
18 finding the above described debt nondischargeable. Tandy and
19 Quan did not ask for, nor did the court enter, a money judgment.
20 Muller moved for costs and reasonable attorney fees under Code
21 § 523(d). Finding that the action against Muller was not
22 substantially justified, a judgment was entered on February 5,
23 2004 in favor of Mary Muller against Tandy and Quan, as trustees

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25 ¹Adv. Proc. #02-6092-fra. The Plaintiff in the adversary proceeding
26 was Clearspring Trust, of which Tandy and Quan are the sole beneficiaries and
trustees. The pleadings were later amended to include Tandy and Quan as named
plaintiffs.

1 of the Clearspring Trust, for costs and attorney fees totaling
2 \$17,917.52. That judgment was assigned to Muller's attorneys on
3 March 17, 2004.

4 The Present Adversary Proceeding

5 Patrick filed a complaint in the present adversary
6 proceeding seeking a declaration that Tandy and Quan may not
7 bring any action in state court seeking a money judgment. He
8 argues that they are barred by the doctrine of *res judicata* from
9 bringing such an action, as the matter should have been litigated
10 in bankruptcy court. He also seeks a declaration that filing any
11 action in state court seeking to enforce a discharged debt would
12 constitute a violation of the discharge injunction.

13 Tandy and Quan filed a motion to dismiss Patrick's complaint
14 under Fed.R.Civ.P. 12(b)(6), (made applicable by Fed.R.Bankr.P.
15 7012), for failure to state a claim.

16 In the meantime, Patrick and Muller's attorneys certified
17 the money judgment assigned to them by Muller to the U.S.
18 Bankruptcy Court, Northern District of California, and were
19 issued a Notice of Levy under a Writ of Execution. They sought
20 to levy certain bank accounts and cash in safe deposit boxes
21 belonging to Clearspring Trust. Clearspring, through trustees
22 Tandy and Quan, filed a motion in the adversary proceeding to
23 enjoin the writ of execution until the issues regarding the
24 Patrick judgment are resolved. They argue that the Muller

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1 judgment could be set off against the Patrick judgment once a
2 money judgment against Patrick is obtained.

3 On August 3, 2004, a hearing was held on Tandy and Quan's
4 motion to dismiss the adversary proceeding and their motion to
5 enjoin the writ of execution. I took the matters under
6 advisement.

7 II. DISCUSSION

8 Motion to Dismiss

9 1. *Res Judicata* (Claim Preclusion)

10 Patrick argues that Tandy and Quan are precluded under the
11 doctrine of *res judicata* from seeking a money judgment in a state
12 court because they should have sought their money judgment in
13 bankruptcy court when they litigated the dischargeability of the
14 debt. *Res judicata* is "[an] affirmative defense barring the same
15 parties from litigating a second lawsuit on the same claim, or
16 any other claim arising from the same transaction or series of
17 transactions and that could have been - but was not - raised in
18 the first suit." Black's Law Dictionary 1336 (8th ed. 2004).

19 The Ninth Circuit Court of Appeals has ruled that a
20 bankruptcy court has jurisdiction to enter a money judgment as an
21 adjunct to a judgment of nondischargeability. Cowen v. Kennedy
22 (In re Kennedy), 108 F.3d 1015 (9th Cir. 1997). However, insofar
23 as jurisdiction to enter a money judgment is simply an adjunct to
24 the core power to determine discharge, it follows that entry of a
25 money judgment is not required. The fact that no money judgment
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1 was sought here does not preclude efforts to seek one in state
2 court.

3 2. Discharge Injunction

4 Patrick seeks a declaration stating that filing any action
5 in a state court seeking to enforce a debt discharged in
6 bankruptcy would constitute a violation of the discharge
7 injunction of Code § 524. It is not necessary to issue a
8 declaratory judgment restating the injunction found at Code
9 § 524(a)(2). Suffice it to say, that any attempt to collect,
10 enforce or liquidate the claim held by Tandy, Quan, or
11 Clearspring Trust for loans made on or after February 14, 1997
12 would not implicate the discharge injunction. That debt was
13 clearly excepted from the discharge of debts granted to Patrick.

14 Motion to Enjoin Writ of Execution

15 Tandy and Quan seek to have this Court issue an injunction
16 under Code § 105 preventing Muller's attorneys from levying on
17 assets of Clearspring Trust under a writ of execution until such
18 time as the matters surrounding the Patrick debt are resolved.
19 Their argument may have more merit if the judgment and
20 unliquidated debt both related to the same party. However, the
21 debt, the enforcement of which they seek to have enjoined,
22 relates to a judgment awarded to Muller alone and the judgment
23 has been assigned to Muller's attorneys. It is separate from the
24 unliquidated claim Tandy and Quan have against Patrick. Given
25 that, I do not see how the two debts would be subject to offset.

1 It is not even clear that this Court has jurisdiction to
2 interfere in this matter. However, to the extent this Court has
3 the power under Code § 105 to enjoin the writ of execution issued
4 by the bankruptcy court in the Northern District of California,
5 it declines to do so.

6 Effect of Gruntz

7 Three recent cases from the Court of Appeals for the Ninth
8 Circuit call into question whether a state court has jurisdiction
9 to determine core issues such as the extent or effect of a
10 discharge injunction. In re Gruntz, 202 F.3d 1074 (9th Cir.
11 2000), (automatic stay, as an order of the Bankruptcy Court, was
12 not subject to collateral attack in another court), In re Dunbar,
13 245 F.3d 1058 (9th Cir. 2001) (State administrative tribunal
14 lacked jurisdiction to determine effect of automatic stay), and
15 In re McGhan, 288 F. 3d 1172 (9th Cir. 2002) (State Court lacked
16 jurisdiction to determine that discharge did not apply because of
17 inadequate notice of the bankruptcy case.)

18 These cases strongly suggest that the state court does not
19 have the authority to determine whether the discharge injunction
20 entered in the Chapter 7 case here prohibits the action.
21 Moreover, the judgment in this Court has already determined the
22 scope of the discharge in this case, so the state court will be
23 precluded by *res judicata* from considering the matter in any
24 event.


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III. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss the adversary proceeding will be granted. Their motion to enjoin the writ of execution issued by the U.S. Bankruptcy Court of the Northern District of California will be denied. An order will be entered consistent herewith along with a judgment of dismissal.


FRANK R. ALLEY, III
Bankruptcy Judge